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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 2.106 of the) ET Docket No. 95-18
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use by the)
Mobile-Satellite Service)

To the Commission

JOINT COMMENTS OF THE ASSOCIATION
FOR MAXIMUM SERVICE TELEVISION, INC.,
THE NATIONAL ASSOCIATION OF BROADCASTERS AND THE RADIO
TELEVISION NEWS DIRECTORS ASSOCIATION

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SUMMARY

In its *First Report and Order*, the Commission struck a balance between allowing market entry to a new competitive mobile service while simultaneously preserving the long-standing value of electronic news gathering. To accomplish the balance between Broadcast Auxiliary Services ("BAS") and Mobile Satellite Service ("MSS"), the Commission determined BAS incumbents must relocate to make way for MSS licensees in the 1990-2025 MHz band. The Commission must now adopt a transition plan that will fairly and expeditiously effectuate the relocation without harming future BAS operations which are essential to the provision of free, locally based, universal television programming that provides virtually all Americans with their primary source of news, sports, and information. It must also refrain from unnecessarily delaying the deployment of MSS. While the Personal Communications Service ("PCS") relocation model serves as a useful guide, important distinctions between the nature of the PCS and MSS transitions require the Commission to modify the Emerging Technologies rules that governed PCS entry to accomplish BAS relocations. Because both MSS and BAS are technically incompatible services, MSS licensees must relocate virtually all BAS incumbents nationwide prior to commencing service. Given the thousands of BAS incumbents, such a massive relocation is a tremendous undertaking and one that could result in detrimental delays to MSS licensees and disruption to BAS licensees unless the Commission adopts a relocation plan that will encourage and indeed facilitate efficient negotiations and rapid relocations.

To that end, the Association for Maximum Service Television ("MSTV"), the National Association of Broadcasters ("NAB") and the Radio-Television News Directors Association ("RTNDA") (collectively, "Joint Commenters") have proposed a BAS relocation plan that calls for collective negotiations for the broadcast industry (subject to opt-out provisions) and a single, mandatory negotiations period. Requiring MSS licensees to conduct thousands of separate, time-consuming negotiations with individual BAS incumbents would lead to a protracted and inefficient transition. Neither the BAS industry nor MSS licensees want, or would benefit from, such a process. Instead, in the interest of convenience, the Commission should simplify the relocation process by allowing MSTV and NAB to represent the broadcast industry in collective negotiations. Additionally, instead of a PCS-type multi-phase negotiation scheme, the Commission should expedite the transition by adopting a single, mandatory negotiations period and ordering potential MSS licensees to begin negotiations with MSTV and NAB immediately. Moreover, the BAS relocation plan should ensure that all actual BAS relocation expenses, including purchasing, installation and engineering costs, are financed by MSS licensees *prior to* any actual relocations so that BAS licensees need not bear the initial burden of the move.

With respect to the effective date for the new BAS channelization plan, Joint Commenters support the Commission's proposal to grant primary status to the new BAS channelization plan on January 1, 2000 or the day after the last Fixed Service ("FS") licensee is relocated. Joint Commenters believe that it is not possible for FS and BAS services to share spectrum. Thus, the Commission's proposal is correct in recognizing that all FS licensees must be cleared from the 2110-2130 MHz band *before* BAS operations may begin

there. Joint Commenters also agree with the Commission's decision to grant immediate secondary status to the new BAS plan to allow new equipment testing during this transition. Both the MSS and BAS industries are anxious to relocate in a timely and efficient fashion so that each can focus its attention on providing the public with its respective services. Consequently, Joint Commenters urge the Commission to make the necessary modifications to the Emerging Technologies rules by adopting the BAS relocation plan proposed herein.

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**JOINT COMMENTS OF THE ASSOCIATION
FOR MAXIMUM SERVICE TELEVISION, INC.,
THE NATIONAL ASSOCIATION OF BROADCASTERS AND THE RADIO-
TELEVISION NEWS DIRECTORS ASSOCIATION**

The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB") and the Radio-Television News Directors Association^{1/} (collectively "Joint Commenters") hereby comment on the Commission's *Further Notice of Proposed Rulemaking*, ET Docket No. 95-18 (adopted March 13, 1997, released March 14, 1997) ("FNPRM"). Having determined that it is appropriate for Mobile Satellite Service ("MSS") licensees to relocate Broadcast Auxiliary Services ("BAS") incumbents to the 2025-2130 MHz band, the Commission seeks comments on the specific details of the BAS relocation plan. Joint Commenters support the Commission's new BAS rechannelization

^{1/} MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks which serves and represents the American broadcast industry. RTNDA is the world's largest professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives, educators, students and others in the radio, television and cable news businesses in over 30 countries.

scheme in the 2025-2130 MHz band and the transition to newly-allocated spectrum without delay. However, in considering a relocation plan, it is important to note that what is at stake is the public's continuing access to extensive and timely news and special event coverage through free, universal, and locally-based television service. Although BAS service will be disrupted to a certain extent to accommodate MSS, any relocation plan must be fairly crafted to avoid injury to the important benefits provided by this displaced service. BAS incumbents are anxious to begin the relocation process, provided that the adopted relocation plan is efficient, fair and results in the least amount of disruption to vital BAS news gathering operations. To preserve the integrity and continuity of their service, BAS incumbents must be fully compensated for all actual relocation expenses prior to relocating.

The Commission's Emerging Technologies rules ("ET rules") provide a good starting point for a relocation plan but must be modified. Unlike PCS, the MSS reallocation will require the simultaneous relocation of both BAS and Fixed Service ("FS") incumbents nationwide, prior to commencing the MSS service. Joint Commenters have therefore proposed a conceptual outline of a plan that will both simplify and expedite the relocation process by centralizing negotiations between MSS licensees and BAS incumbents nationwide. This plan will relocate BAS incumbents as quickly, efficiently, and flexibly as possible without sacrificing the benefits conferred on the public by these important electronic news gathering services. Joint Commenters therefore urge the Commission to adopt its proposed plan to facilitate a smooth transition for the BAS and MSS industries.

I. JOINT COMMENTERS SUPPORT THE COMMISSION'S PROPOSED NEW BAS CHANNELIZATION PLAN AND THE PROPOSED EFFECTIVE DATE.

A. Channelization

The *FNPRM* proposes to rechannelize the new BAS band into seven channels of 15 MHz each.^{2/} Joint Commenters applaud the Commission's recognition of the 2 GHz band's heavy usage and commend the proposal to allow retention of the seven-channel scheme for the BAS band, even though the plan presents a formidable technical challenge to BAS incumbents. The new channelization plan is likely to preserve the quality and scope of essential broadcast auxiliary services while still requiring BAS users to make significant advances in spectrum efficiency. Joint Commenters offer only a few suggestions to fine-tune the new channelization plan.

The *FNPRM* questions whether the Commission should incorporate more flexibility into its newly-adopted channelization plan to accommodate those markets in which BAS incumbents may not require all seven channels or use digital equipment.^{3/} To permit such flexibility, the *FNPRM* proposes to award one channelization plan primary status and to accord other plans, with fewer channels, secondary status. Joint Commenters believe that such a proposal is unwarranted. Attempting to craft various channelization plans to meet the diverse needs of thousands of BAS incumbents would be far too complex a task for the Commission to undertake. This is particularly true given the geographic and temporal fluctuation in BAS spectrum needs and the need for BAS operators to operate nationwide on a

^{2/} See *FNPRM* at ¶ 64.

^{3/} *Id.* at ¶ 68.

single frequency block. Instead, the Commission should allow frequency coordinators in each market to implement the necessary flexibility for individual BAS operators. Because these coordinators already facilitate BAS spectrum sharing among users according to constantly shifting demands, frequency coordinators are in the best position to address the individual needs of BAS incumbents in their markets.

B. Effective Date

The Commission should coordinate the effective date for the new BAS channelization plan with the FS relocation. Although Joint Commenters do not now take a position on the mechanics of the FS relocation, the timing of that process will determine when BAS operations can begin to operate in the 2025-2130 MHz band. The *FNPRM* urges the BAS and FS industries to study the feasibility of band sharing between these services.^{4/} However, given the different operating requirements for these two services, it is not operationally feasible for BAS and FS services to share spectrum.^{5/} Indeed, as the Commission itself noted,^{6/} the BAS service is an itinerant service that requires news crews to constantly move to various locations with little or no prior notice. Thus, it is difficult, if not impossible, to coordinate with other services. Furthermore, the 2110-2130 MHz band is paired with the 2160-2180 MHz band, and both bands have been targeted for relocation in the Emerging Technologies docket and both sets of incumbents will eventually have to vacate

^{4/} *Id.* at ¶ 69.

^{5/} See also Comments of COMSAT at 10 (explaining that BAS and FS sharing is not feasible).

^{6/} See Notice of Proposed Rulemaking in the Matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service at ¶ 10, ET Docket No. 95-18.

their bands. FS incumbents must be completely cleared from the 2110-2130 MHz band before BAS incumbents can rechannelize under the new plan. Thus, the *FNPRM* correctly concludes that the relocation and rechannelization of the BAS band in any specific geographic area must be coordinated with the clearing from the 2110-2130 MHz band of FS licensees in that area.

The *FNPRM* proposes to grant primary status to the new channelization plan on January 1, 2000 or the day after the last FS licensee has been relocated, whichever is later.²⁷ Joint Commenters agree that relocation of the last FS licensee is the appropriate end-date. It is important, however, that the Commission consider a transitional period (as much as 12 months after the effective date of the new MSS service) to allow adequate time for the manufacture of a sufficient amount of BAS equipment tuned to the new channelization plan. Noting the inherent conflict between the current BAS channelization and the new channelization plans, the Commission proposes permitting BAS incumbents to use the new channel plan on a secondary basis prior to January 1, 2000 to allow new equipment testing as long as it does not interfere with other BAS operations. Even after the new plan becomes primary, the existing channelization plan may still be used on a secondary basis. Joint Commenters agree that this proposal strikes the necessary balance during this transition period.

²⁷ *Id.* at ¶ 65.

II. PROPOSED BAS RELOCATION PLAN.

The Commission has determined that MSS providers should bear the actual expense of relocating BAS incumbents.^{8/} The *FNPRM* seeks comment on specific details of the BAS relocation process and proposes to follow the ET policies. Specifically, the *FNPRM* proposes the adoption of a relocation plan similar to that used to relocate fixed microwave service incumbents in the PCS proceeding.^{9/} Joint Commenters support adoption of the principles of fairness and equity embodied in the PCS relocation model. However, while the PCS relocation model serves as a useful guide, Joint Commenters believe that certain practical distinctions between the BAS and microwave incumbents dictate several limited modifications of the ET rules. Joint Commenters propose a conceptual outline which will ensure that BAS incumbents relocate as quickly and as efficiently as possible.

A. There Are Important Distinctions Between the PCS Relocation Model and the Proposed BAS Relocation.

There are important distinctions between BAS and microwave incumbents which counsel against adopting certain aspects of the ET rules for BAS relocation. First, instead of being physically relocated like microwave licensees, BAS incumbents will simply need to retrofit, replace or, in some cases, retune their equipment to use a different frequency. Second, while PCS relocation occurred on a market-by-market basis, BAS relocation must occur nationally so as to avoid interference to the MSS service. Thus, unlike PCS licensees who could relocate microwave incumbents one market at a time, MSS licensees must relocate all BAS incumbents nationwide before commencing service. It is estimated that there are

^{8/} See *FNPRM* at ¶ 64.

^{9/} See *FNPRM* at ¶ 70.

approximately 2,000 fixed and 5,500 mobile BAS incumbents nationwide.^{10/} To account for the distinctions between the PCS model and the proposed BAS relocation, Joint Commenters ask the Commission to adapt the ET rules in two important respects. First, the Commission should require all BAS incumbents to negotiate with MSS licensees on a collective basis. Second, the Commission should reject the ET rules' multi-phase negotiations framework.

Perhaps the chief advantage of these proposals is that they will save time. A review of the PCS relocation process shows that the tremendous amount of time required to conduct individual negotiations with each incumbent delayed the relocation process.^{11/} Given the sheer number of BAS incumbents and the national scope of the proposed relocations, MSS licensees have a greater need for a more centralized and highly-organized relocation process than did PCS licensees.

B. The Commission Should Require BAS Incumbents to Negotiate Collectively.

Given the need for simultaneous, national relocations, the Commission should permit a single entity to represent all BAS incumbents in negotiations with MSS licensees. Relocation agreements resulting from collective negotiations should be binding on all BAS incumbents who choose to be represented by the negotiating entity. Those BAS incumbents

^{10/} See Joint Reply Comments of the Association for Maximum Service Television, Inc. and Other Major Television Broadcasting Entities at 2 of Exhibit B.

^{11/} See, e.g., Comments of Sprint Telecommunications Venture at 5, filed November 30, 1995 in response to *Notice of Proposed Rulemaking for the Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157.

that seek to engage in separate relocation negotiations should be free to pursue this option.^{12/} But generally, adoption of a collective negotiation framework will both simplify and expedite the transition process for MSS operators and BAS incumbents. As noted in the *FNPRM*, individual negotiations with BAS incumbents individually would lead to staggered relocations resulting in interference between BAS incumbents as they attempt to operate under both the current and new channelization plans. Collective negotiations would eliminate the possibility of such interference by eliminating or at least coordinating the lag time between each individual relocation. Collective negotiations would also be faster and would dramatically cut transaction costs for MSS licensees.

With respect to identifying a representative negotiator, Joint Commenters propose that NAB and MSTV jointly share responsibility for the collective negotiations for broadcasters.^{13/} As non-profit organizations representing more than 1076 and 330 broadcast television stations respectively, NAB and MSTV are intimately familiar with the BAS operations. Designation of NAB and MSTV is also appropriate as these organizations already possess the necessary resources and contacts to accurately assess the diverse equipment needs of BAS incumbents. NAB and MSTV are also uniquely qualified because they have traditionally represented the interests of television broadcasters in situations where complex negotiation, advocacy/litigation and, in some cases, fiduciary obligations have been required. For example, NAB has represented broadcasters in the proceedings and financial distributions

^{12/} For example, it is possible that some broadcast networks may wish to undertake their own negotiations.

^{13/} This band is also used by cable operators, networks, and the Local Television Transmission Service. A similar arrangement should be developed for those licensees.

related to cable television copyright royalties. Similarly, NAB and MSTV coordinated the funding and operation of the Advanced Television Test Center and the technical project exploring "coded orthogonal frequency division multiplexing" technology for digital television. In addition, MSTV and NAB organized the nation's television broadcasters into 10 regional groups and worked with each to address regional issues associated with the roll-out of digital television. Thus, NAB and MSTV have the necessary experience to represent broadcasters in collective negotiations. With NAB and MSTV conducting collective negotiations, MSS operators will be able to spend the bulk of their time preparing to bring consumers a new competitive mobile communications service instead of haggling over relocation costs in endless and expensive negotiations.

C. The Commission Should Reject a Multi-Phase Negotiation Process in Favor of an Immediate Mandatory Negotiation Period.

With respect to the structure and timing of the proposed collective negotiations, Joint Commenters urge the Commission to reject the two-phase negotiations structure set forth in the ET rules. Neither BAS incumbents nor any other interest would be served by a protracted relocation process. With the adoption of collective negotiations, the payment of BAS relocation costs should proceed far more rapidly than in the PCS context. Moreover, because BAS incumbents are not averse to relocating, it is unnecessary to delay and complicate the transition process with a two-year voluntary period and a one-year mandatory period. This two-phased structure hindered the PCS relocation and the Commission should act to avoid those pitfalls in this proceeding. For example, in the PCS proceeding, there was conflict between microwave incumbents and PCS entrants over whether or not the negotiations should commence during the voluntary period. PCS entrants alleged that

incumbents demanded more than actual relocation costs in exchange for agreeing to relocate earlier rather than waiting until the mandatory period.^{14/} Whatever the truth of the situation in the PCS proceeding, one thing is clear -- the existence of a two-staged negotiations period complicated matters and unsettled both the new entrants and the incumbents. The adoption of a single, mandatory negotiation period in this proceeding will give the MSS community confidence that it will not be subject to the complications facing the PCS licensees and it will generally streamline the relocation process. Consequently, instead of adopting a multi-phase negotiation structure, the Commission should impose a single mandatory negotiation period, and order relocation negotiations to commence immediately.

D. Joint Commenters' Recommended BAS Relocation Plan.

The following sets forth a conceptual framework for the Joint Commenters' proposed BAS relocation plan. This outlines for the Commission the key components of Joint Commenters' plan. More concrete details will be submitted in a subsequent filing.

- **Data Collection:** A complete and accurate list of all BAS equipment nationwide does not currently exist.^{15/} To conduct collective negotiations, NAB and MSTV must

^{14/} See, e.g., Comments of Omnipoint Communications, Inc. at 5-7 (urging the Commission to curb abuses by microwave incumbents during the voluntary period); Comments of Pacific Bell Mobile Services at 8-9; Comments of PCS PrimeCo., L.P. at 3-6 (explaining that the voluntary period invites incumbent abuse because a small but significant group of incumbents have used this period to hector PCS licensees with extortionate, unreasonable demands); Comments of Sprint Telecommunications Venture at 4 ("a disturbing number of incumbents are seeking to misuse the Commission's rules to secure windfall payments well beyond full relocation costs. . . ."). The aforementioned comments were filed on November 30, 1995 in response to *Notice of Proposed Rulemaking for the Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157.

^{15/} The FCC's BAS computerized database is incomplete. See Joint Reply Comments of MSTV and Other Major Television Broadcasting Entities at Exhibit B which contains an engineering statement provided by Hammet & Edison, Inc. concluding the FCC's database is incomplete and does not include many BAS licensees.

compile a current inventory of all BAS equipment. Thus, the first step in the relocation process, which NAB and MSTV have already started, is to create a comprehensive database of all BAS equipment in the country. Through the assistance of frequency coordinators, MSTV and NAB will catalogue the type, location and quantity of BAS equipment in every market.^{16/} Additionally, NAB and MSTV will gather information about the cost of retuning, replacing or retrofitting equipment -- costs which are unknown because there is no existing market for this equipment. NAB and MSTV will also embark on a campaign to educate BAS incumbents about the relocation plan and the forthcoming data collection process.

- **Relocation Expenses/Comparable Equipment:** As noted in the *FNPRM*, Joint Commenters agree that replacing current BAS equipment or, in the case of newer equipment, simply retuning the equipment is all that is required to relocate BAS incumbents. Relocation expenses should include all engineering expenses, equipment costs, transactional costs and FCC fees as well as any additional actual costs. Relocation expenses must cover the cost of comparable equipment. Comparable equipment means equipment that is equal, or superior, to incumbents' current equipment. MSS providers will be fully responsible for the costs of installing and testing the new equipment to ensure comparability.

The *FNPRM* also asks whether the value and age of BAS equipment should be taken into account when deciding relocation costs.^{17/} They should not. Instead, relocation costs should be deemed to consist of the costs of replacing, retuning or retrofitting equipment so that it is capable of operating in the new band (plus any associated transactional costs).

^{16/} It is important to note that in compiling a BAS database, the focus should be on the actual numbers of BAS equipment, not the number of BAS licensees because many licensees own several pieces of equipment.

^{17/} *Id.* ¶ at 70.

Because the universe of potential replacement equipment is fairly limited, Joint Commenters anticipate few disputes over defining comparable replacement equipment. However, to the extent that such disputes arise, the Commission should resolve them on a case-by-case basis.

- **Timing of Relocation Payments:** MSS licensees should pay all relocation expenses up-front prior to any actual retrofitting, retuning or replacement of BAS equipment. The Commission should prohibit installment payments of relocation expenses. An MSS operator's payment obligations should be triggered by its acquisition of a license from the Commission. However, actual payment should not be due until the MSS provider reaches an agreement with NAB/MSTV regarding the relocation expenses for a particular BAS incumbent.

- **Timing of Actual Relocations:** BAS incumbents must receive relocation expense payments *before* they actually relocate. Additionally, after paying relocation expenses, MSS licensees should be responsible for the completion of all activities necessary for placing the new equipment into operation, including engineering and frequency coordination, before incumbents are required to relocate. If an incumbent determines within one year of purchase of the replacement equipment that the new equipment is not comparable, the MSS provider should re-install the incumbent with its original equipment until equivalency is attained. As previously mentioned, the timing of the FS relocation is critical to the timing of BAS relocations. Consequently, BAS incumbents should not be required to relocate until all FS incumbents have vacated the 2110 - 2130 MHz band. ^{18/}

^{18/} Given Joint Commenters' proposal for an expedited BAS relocation process, the timing of any FS relocation plan should proceed on a corresponding schedule to avoid delaying BAS relocations. It may therefore make sense for the Commission to adopt Joint Commenters' proposed relocation scheme for both BAS and FS incumbents.

- **Interim BAS Licensing:** Joint Commenters oppose freezing new BAS license applications during relocation negotiations. Public demand for more and more competitive live news coverage continues to escalate. A freeze on BAS licenses throughout negotiations would handicap the ability of broadcasters and other news organizations, like cable programmers, to effectively meet this demand. However, because the *FNPRM* puts new BAS license applicants on notice of the upcoming BAS rechannelization, Joint Commenters do not oppose subjecting all BAS licenses issued after the completion of this proceeding to a condition requiring relocation to be at such BAS licensees' own expense.

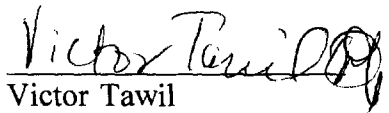
III. CONCLUSION


Instead of adopting a lengthy BAS transition process, the Commission should adopt a collective negotiations process (subject to opt-out provisions) and a single, mandatory negotiations period. A relocation plan incorporating these components will ensure timely market entry for MSS service without depriving the public of valuable BAS news gathering

services. For all these reasons, Joint Commenters urge the Commission to act swiftly to adopt the proposed relocation plan.

Respectfully submitted,

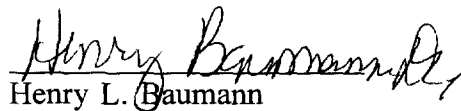
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